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Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability MDL NO. 15-02641-PHX-DGC
Litigation

This Document Relates to:

ROBERT G. HARBRIDGE,

Plaintiff,

Case No. CV-16-00008-PHX-DGC

v.

C. R. BARD, INC., a New Jersey
Corporation; AND BARD PERIPHERAL
VASCULAR INC., an Arizona
Corporation,

Defendants.

**DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO STRIKE
PLAINTIFF'S AMENDED MASTER
SHORT FORM COMPLAINT**

Pursuant to Local Rule 7.2(m)(1), Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (“Bard”) respectfully move this Court to strike Plaintiff’s February 12, 2016 amended short form complaint because it was improperly filed in violation of Federal Rule of Civil Procedure 15(a).

I. PROCEDURAL HISTORY

On January 5, 2016, Plaintiff filed his initial short form complaint in MDL 2641, *In Re: Bard IVC Filters Products Liability Litigation* naming only C. R. Bard, Inc. as a defendant. *See* 2:16-cv-00008-DGC, Dkt. No. 1. Bard subsequently filed its notice of appearance for this matter on January 13, 2016. *See* 2:15-md-02641-DGC, Dkt. No. 422. On February 12, 2016, more than 21 days after Plaintiff served his initial short form complaint and Bard served its notice of appearance, Plaintiff filed an amended short form complaint without Bard’s consent or this Court’s leave naming both C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. as defendants. *See* 2:15-md-02641-DGC, Dkt. No. 707. Bard notified Plaintiff of his improperly filed amended short form complaint via a letter on February 16, 2016. *See* February 16, 2016 letter from Richard North to Max Freeman, attached as Exhibit A.

II. ARGUMENT AND CITATION TO AUTHORITY

Federal Rule of Civil Procedure 15(a) provides, in relevant part, that a “party may amend its pleading once as a matter of course within 21 days after serving it, or if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading.” If the pleading cannot be amended as a “matter of course,” the party seeking to amend must either seek leave of court to amend the pleading or the opposing party’s consent to the amended pleading. *Id.*

Local Rule 7.2(m) states, in relevant part, that a motion to strike may be filed “if it seeks to strike any part of a filing or submission on the ground that it is prohibited (or not authorized) by a statute, rule, or court order.”

1 In this matter, Plaintiff filed his February 12, 2016 amended short form complaint
2 without Bard's consent or this Court's leave more than 21 days after service of his initial
3 short form complaint and Bard's service of its notice of appearance. Accordingly, Plaintiff's
4 amended short form complaint is prohibited under Fed. R. Civ. P. 15(a) and this Court should
5 strike it pursuant to Local Rule 7.2(m).

6 WHEREFORE, Bard respectfully requests that this Court enter an Order striking
7 Plaintiff's February 12, 2016 amended short form complaint. Pursuant to Local
8 Rule 7.1(b)(3), a proposed order is attached as Exhibit B.

9 This 4th day of March, 2016.

10
11 s/Richard B. North, Jr.
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22 **Attorney for Defendants C. R. Bard, Inc. and**
23 **Bard Peripheral Vascular, Inc.**
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 4, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notification of such filing to all counsel of record.

s/Richard B. North, Jr.
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